Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of

National Exchange Carrier Association, Inc.	)	
Tariff FCC No. 5, Transmittal No. 951	)	WC Docket No. 02-340
	)	
	)	

REBUTTAL COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

Pursuant to the order released by the Federal Communications Commission (the FCC) on October 31, 2002,[1] the United States Telecom Association (USTA)[2] respectfully submits its rebuttal comments to the oppositions filed on December 5, 2002, in the Direct Case of the National Exchange Carrier Association, Inc. (NECA) submitted on November 21, 2002 (Direct Case).[3] NECA filed tariff Transmittal No. 951 (Transmittal 951) to become effective September 5, 2002. The FCC suspended NECA's tariff for five months, pending an investigation to determine whether the revised security deposit provisions proposed in Transmittal 951 are reasonable and not so vague as to permit NECA members to discriminate unreasonably against their interstate access customers. USTA supports NECA's Direct Case because it believes that the provisions regarding security deposits detailed in Transmittal 951 are reasonable and just and

[1] *In the Matter of National Exchange Carrier Association, Inc., Tariff No. 5,* WC Docket No. 02-340, Order, DA 02-2948 (rel. Oct. 31, 2002).
[2] USTA is the nation's oldest trade association for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.
[3] *In the Matter of National Exchange Carrier Association, Inc., Tariff No. 5*, WC Docket No. 02-340, Direct Case of the National Exchange Carrier Association, Inc. (Nov. 21, 2002) (NECA Direct Case).

should be implemented to protect NECA incumbent local exchange carriers (ILECs)[4] from the risk of uncollectibles. USTA urges the FCC to grant NECA's request in Transmittal 951.

DISCUSSION

USTA strongly urges the FCC to allow NECA to make the changes to its tariff proposed in Transmittal 951 to allow its member companies to require advance deposits from financially weak interconnecting carriers, in advance of any given interconnecting carrier's bankruptcy, in order to ensure payment for service.[5] Under NECA's current tariff, NECA carriers may require deposits from customers who have a proven history of late payments or who lack established credit. Under Transmittal 951, additional security deposits may be required from customers (1) who have a proven history of late payments;[6] (2) whose average monthly billing for the preceding three months has increased beyond the amount initially used to estimate the currently-held security deposit, if applicable; or (3) whose creditworthiness is below a commercially

[4] NECA's members include over 1,000 ILECs.
[5] USTA has advocated five other principles to balance the interests of ILECs and their customers. First, after an interconnecting carrier's bankruptcy petition, the FCC should defer to the bankruptcy law and rules, which require payment (or adequate assurances of payment) for post-petition services so as to preserve the abilities of the numerous supplier-carriers to continue to provide services. Second, in the event that supplier-carriers are unable to recover all debt owed them for services (either pre-petition or post-petition) in a bankruptcy proceeding of an interconnecting carrier, supplier-carriers should be allowed to recover this cost through some clear pricing mechanism provided by the FCC. Third, any such mechanism should also allow the recovery of unbundled network element charges defaulted on by a bankrupt interconnecting carrier. Fourth, the FCC should support the application of the Bankruptcy Code's "cure" provisions to supplier-carriers as holders of "executory contracts" with interconnecting carriers whereby pre-petition services remaining unpaid at the time of a bankruptcy filing must first be paid ("cured") by a defaulting interconnecting carrier before that carrier can continue to benefit, post-petition, from its preexisting relationships with ILECs. Finally, the FCC should provide streamlined mechanisms for the orderly transfer of customers and facilities from a liquidating interconnecting carrier to such a carrier that will assume the liquidating carrier's service obligations, facilities and the obligation to "cure" pre-petition defaults of the bankrupt carrier. USTA believes that these proposals best safeguard the continued ability of ILECs to service their local communities in the fashion demanded by federal and state laws. *See In the Matter of Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202, Comments of the United States Telecom Association (Aug. 15, 2002) at 8-10.
[6] Late payments are defined as two or more occurrences in the preceding twelve-month period during which a company received remittance after the payment date.

acceptable level.[7] NECA members would use security deposits to satisfy any amounts due upon discontinuance of service, with any remaining credit balance refunded to the customer, and would return deposits when a customer established a history of prompt payments and commercially acceptable credit. Transmittal 951 would shorten from 30 to 10 days the notice period after which a NECA company can refuse to process new orders or discontinue service. USTA fully supports NECA's justifications for Transmittal 951 set forth in the Direct Case because now more than ever, ensuring continuity of service by limiting the financial fallout from companies facing bankruptcy is of utmost importance. This is particularly challenging because not only must NECA companies find ways to continue delivering service to bankrupt carriers, they must find ways to do so without being dragged down with financially-troubled carriers.

NECA companies must be able to protect their ability to obtain payment for services they are legally required to provide to failing companies. NECA companies cannot afford to absorb hundreds of millions of dollars of costs each month providing service to companies that cannot pay for service. Unlike carriers that have the option to refuse to provide service, ILECs are required by law to provide service upon demand, often at discounted rates. No other companies are required to sell services below market rates to competitors with no assurance of payment. If forced to provide service to bankrupt or uncreditworthy customers without being permitted to implement reasonable measures to protect against the risk of nonpayment, the financial health of NECA ILECs as well as their ability to serve customers will suffer enormously.

[7] Transmittal 951 defines a "commercially acceptable" level of creditworthiness as having a corporate debt securities rating with respect to any outstanding general debt obligations of at least BBB according to a Standard and Poor's or an equivalent debt rating from other debt-rating agencies. For a customer that does not issue debt securities, a commercially acceptable level of creditworthiness is having a composite credit appraisal rating published by Dun and Bradstreet of least "good" or a Paydex score as published by Dun and Bradstreet of at least "average."

A number of interexchange carriers have disingenuously responded to NECA's proposals to protect its member companies from the risk of bad debt by stating that the NECA companies face no increased risk. AT&T, for example, says that NECA's proposals are in response to "a largely nonexistent problem."[8] Sprint admits that NECA companies have seen an increase in uncollectibles but sees the increase as a one-time aberration, not indicative of a long-term trend in uncollectibility.[9] USTA strongly disagrees with such comments.[10] Even if one-time events, the rash of recent bankruptcies are of an unprecedented magnitude, the fallout from which is sure to have enormous long-term and far-reaching effects. Furthermore, USTA concurs with industry analysts who find that there has been a significant and permanent change in the market that cannot be characterized as a normal market fluctuation.[11]

USTA urges the FCC to recognize that it would be a serious miscalculation to force healthy NECA member carriers to suffer financial hardship in an attempt to salvage bankrupt or financially unstable carriers. NECA estimates that the total common line and traffic sensitive uncollectible revenue for WorldCom, Inc. (WorldCom) and Global Crossing Ltd. (Global Crossing) in 2002 will be more than $70,000,000.00 when all of its member companies have fully reported.[12] In addition, NECA estimates that the total impact of the Global Crossing bankruptcy on interstate access revenues for 2002 will be about $14,000,000.00, and that for

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[8] *In the Matter of National Exchange Carrier Association, Inc., Tariff No. 5,* WC Docket No. 02-340, Order, AT& T Opposition to Direct Case (Dec. 5, 2002) at 2.
[9] *In the Matter of National Exchange Carrier Association, Inc., Tariff No. 5,* WC Docket No. 02-340, Order, Sprint Corporation Opposition to Direct Case (Dec. 5, 2002) at 4, 7.
[10] The increase in uncollectibles is not just a short-term blip, but a phenomenon that began over five years ago, according to the Telecommunications Risk Management Association (TRMA). TRMA was formed in September 1997 with the stated goal of bringing telecom risk management professionals together to understand and cooperate to prepare members to deal with the industry's uncollectibles issues. *See* TRMA website at www.trmanet.org.
[11] *See* Scott Wooley, *Bad Connection*, Forbes (Aug. 12, 2002). Mr. Wooley concludes that the cash drain on telephone companies is greater now than in the past, and any increase in uncollectibles is damaging because of what he calls increased "cash burn" required by capital expenditures (some of which subsidize competitors' entrance into the local market). He sees no end in sight to this cash drain.

WorldCom will be about $60,000,000.00.[13] The full impact of the bankruptcies of Global Crossing, WorldCom and others have not been felt and likely will not be felt for some time. In September, Global Crossing proposed a plan of reorganization offering its telecom creditors less than a third of their prepetition claims. Global Crossing's plan has yet to be approved by the Bankruptcy Court, and there is no assurance that it will be effected even if approved.[14] WorldCom is even earlier in its bankruptcy case, just recently having postponed proposing a reorganization plan for several more months,[15] and other major companies are teetering on the edge of bankruptcy. For these reasons, tariff changes are needed to mitigate the losses NECA companies reasonably expect.

Those filing in opposition to Transmittal 951 have found fault with the new deposit provisions proposed by NECA because they want NECA companies to shoulder all of the risk of lost payments in the wake of bankruptcy filings. In order to ensure the continued ability of NECA companies to serve their local communities as required by law, USTA asks the FCC to act expeditiously to approve NECA's Transmittal 951. Even if the FCC does not approve the specific triggers for requiring security deposits proposed in Transmittal 951, it nonetheless must recognize that NECA companies should not be forced to be the guarantors of WorldCom's or any other company's bad debt and move quickly to develop guidelines protecting ILECs from the high risk of uncollectibles. NECA companies, as well as other ILECs, need commercially reasonable means to insulate themselves from heretofore unimagined and unprecedented financial turmoil in the telecommunications industry. These companies must be permitted to

[12] NECA Direct Case at 4-5.
[13] *Id*. at 6.
[14] *In re* Global Crossing Ltd., et al., Bankr. No. 02-40188, DE 1754 (Bankr.S.D.N.Y 9/16/02)

take steps to reduce the risk of nonpayment, thereby ensuring their own viability and that of the telecommunications industry in general.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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[15] *In re* WorldCom, Inc., Bankr.No. 02-13533, DE 1999 (Bankr.S.D.N.Y. 11/15/02).

CERTIFICATE OF SERVICE

I, Indra Sehdev Chalk, hereby certify that a copy of the foregoing ***Rebuttal Comments of the United States Telecom Association*** was distributed via U.S. Mail on this 12th day of December 2002 to the attached service list.

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